

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 1:18-cr-20316-2
Honorable Thomas L. Ludington

SHELLY DE LA CRUZE,

Defendant.

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**ORDER DENYING DEFENDANT’S MOTION FOR COMPASSIONATE RELEASE
WITH PREJUDICE**

On June 13, 2018, Defendant was indicted by a grand jury on one count of conspiracy to distribute five or more kilograms of cocaine. ECF No. 39. Defendant pled guilty and was sentenced to 60 months incarceration followed by five years of supervised release. ECF No. 108.

On March 22, 2021, Defendant filed a motion for compassionate release. ECF No. 109. The Government timely responded. ECF Nos. 110, 111, 112. As of April 29, 2021, Defendant has not filed a reply. For the following reasons, Defendant’s Motion will be denied.

I.

The United States is facing an unprecedented challenge with the novel coronavirus (“COVID-19”) pandemic.

The COVID-19 virus is highly infectious and can be transmitted easily from person to person. COVID-19 fatality rates increase with age and underlying health conditions such as cardiovascular disease, respiratory disease, diabetes, and immune compromise. If contracted, COVID-19 can cause severe complications or death.

Wilson v. Williams, 961 F.3d 829, 833 (6th Cir. 2020). In light of the threat posed by COVID-19, Defendant seeks a reduction of her sentence pursuant to 18 U.S.C. § 3582(c)(1)(A)—a form of relief often referred to as “compassionate release.” Section 3582(c)(1)(A) provides,

The court may not modify a term of imprisonment once it has been imposed except . . . upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier, may reduce the term of imprisonment . . . after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that . . . extraordinary and compelling reasons warrant such a reduction . . . and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission

18 U.S.C. § 3582(c)(1)(A). Accordingly, the threshold question is exhaustion. If exhaustion is found, courts must then follow the statute’s three-step test:

At step one, a court must “find[]” whether “extraordinary and compelling reasons warrant” a sentence reduction. At step two, a court must “find[]” whether “such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.” The Commission’s policy statement on compassionate release resides in U.S.S.G. § 1B1.13. Thus, if § 1B1.13 is still “applicable,” courts must “follow the Commission’s instructions in [§ 1B1.13] to determine the prisoner’s eligibility for a sentence modification and the extent of the reduction authorized.” At step three, “§ 3582(c)[(1)(A)] instructs a court to consider any applicable § 3553(a) factors and determine whether, in its discretion, the reduction authorized by [steps one and two] is warranted in whole or in part under the particular circumstances of the case.”

United States v. Jones, 980 F.3d 1098, 1107–08 (6th Cir. 2020) (internal citations omitted). “In cases where incarcerated persons [as opposed to the Bureau of Prisons] file motions for compassionate release, federal judges may skip step two of the § 3582(c)(1)(A) inquiry and have full discretion to define ‘extraordinary and compelling’ without consulting the policy statement § 1B1.13.” *Id.* at 1111. “[D]istrict courts may deny compassionate-release motions when any of the three prerequisites listed in § 3582(c)(1)(A) is lacking and do not need to address the others.”

United States v. Elias, 984 F.3d 516, 519 (6th Cir. 2021).

A.

As explained in the statute, before a court may consider an inmate's request for a reduced sentence under 18 U.S.C. § 3582, the inmate must first exhaust her administrative remedies with the Bureau of Prisons ("BOP") or wait 30 days after making such a request. The Sixth Circuit has explained that:

By creating a compassionate-release option in the First Step Act, Congress gave inmates an option to seek early release on health grounds. The seriousness of COVID-19 and its spread in many prisons make it all the more imperative that the prisons have authority to process these applications fairly and with due regard for the seriousness of each inmate's risk. Free-floating exceptions to the rule, available to anyone willing to go to federal court first, will not help that cause.

United States v. Alam, 960 F.3d 831, 835–36 (6th Cir. 2020).

Defendant sought compassionate release from the BOP on February 11, 2021. She has not received a response. Accordingly, she has exhausted her administrative remedies.

B.

The next issue is whether sentence reduction is warranted by "extraordinary and compelling reasons." Because Defendant brings this Motion on her own behalf, § 1B1.13 is "inapplicable," and "[u]ntil the Sentencing Commission updates § 1B1.13 to reflect the First Step Act, district courts have full discretion in the interim to determine whether an 'extraordinary and compelling' reason justifies compassionate release." *Jones*, 980 F.3d at 1109. Accordingly, courts of this circuit are no longer confined to the considerations outlined in the policy commentary when determining if a defendant's request is extraordinary and compelling, such as whether an inmate suffers from a "terminal illness" or "serious physical or medical condition." U.S.S.G. § 1B1.13 cmt. n.1.

Despite the lack of express guidance, *Jones* suggests that an inmate may have an extraordinary and compelling reason for release where she suffers from a medical condition

identified as a risk factor for COVID-19. *See Jones*, 980 F.3d at 1102 n.6 (holding that inmate’s prior exposure to tuberculosis “could be considered an extraordinary and compelling reason for compassionate release” because it “put him at risk of contracting the virus” or “serious long-term health problems” if he had already contracted it). Courts considering the issue post-*Jones* have agreed. *See, e.g., United States v. Rucker*, No. 17-20716, 2020 WL 7240900, at *2 (E.D. Mich. Dec. 9, 2020) (HIV and asthma) (citing *Jones*, 980 F.3d at 1102 n.6); *United States v. White*, No. 18-20183, 2020 WL 7240904, at *3 (E.D. Mich. Dec. 9, 2020) (BMI of 45.9) (citing *Jones*, 980 F.3d at 1102 n.6); *United States v. Crowe*, No. CR 11-20481, 2020 WL 7185648, at *3 (E.D. Mich. Dec. 7, 2020) (latent tuberculosis, hyperlipidemia, obesity).

More recently, the Sixth Circuit affirmed the denial of compassionate release based on a two-part test for extraordinary and compelling reasons. *See Elias*, 984 F.3d at 520. Under the two-part test in *Elias*, the risk of contracting COVID-19 constitutes an extraordinary and compelling reason “(1) when the defendant is at high risk of having complications from COVID-19 and (2) the prison where the defendant is held has a severe COVID-19 outbreak.”¹ *Id.* (quoting *United States v. Hardin*, 2020 WL 2610736, at *4 (N.D. Ohio May 22, 2020)). The Sixth Circuit also held that the district court, in evaluating the movant’s medical conditions, “properly considered the CDC guidance that was in effect at the time,” given that “[r]elying on official guidelines from the CDC is a common practice in assessing compassionate-release motions.” *Id.* at 521.

Defendant argues that there is a COVID-19 outbreak at her facility, her BMI is over 30, and she was a smoker for 20 years. ECF No. 109. The Government agrees that her BMI is high but disputes her claim of being a former smoker for 20 years. ECF No. 110 at PageID.472. However, the Government also explains that she has received both doses of the Pfizer COVID-19

¹ Consistent with *Jones*, the court emphasized that district courts need not apply this definition but that it is within their discretion to do so. *Elias*, 984 F.3d at 521 n.1.

vaccine. *Id.*; ECF No. 110 at PageID.459. Specifically, she received her second dose on January 20, 2021. *Id.* at PageID.468; ECF No. 111 at PageID.502.

Obesity is likely to increase an individual's risk of severe illness from COVID-19. *See People with Certain Medical Conditions*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> [<https://perma.cc/25JE-3FW7>] (last visited April 29, 2021). However, there are no active cases of COVID-19 at Greenville FCI. *COVID-19 Coronavirus*, Federal Bureau of Prisons, <https://www.bop.gov/coronavirus> [<https://perma.cc/63Q5-JN5W>] (last visited Apr. 29, 2021). Most importantly, Defendant has been fully vaccinated with the Pfizer-BioNTech vaccine. The CDC explains that the Pfizer-BioNTech vaccine was “95% effective at preventing laboratory-confirmed COVID-19 illness in people without evidence of previous infection.” *Pfizer-BioNTech*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/Pfizer-BioNTech.html> [<https://perma.cc/MGT2-Z8XK>] (last updated Apr. 16, 2021). As this Court has previously held, “absent some shift in the scientific consensus, Defendant’s vaccination against COVID-19 precludes the argument that [her] susceptibility to the disease is ‘extraordinary and compelling’ for purposes of § 3582(c)(1)(A).” *See* ECF No. 45 in No. 17-20753.

Based on the foregoing, Defendant has not demonstrated an extraordinary and compelling reason for release. Consequently, this Court declines to consider whether the § 3553 factors would warrant a sentence reduction. *See Elias*, 984 F.3d at 519. Defendant’s Motion for Compassionate Release will be denied.

II.

Accordingly, it is **ORDERED** that Defendant's Motion for Compassionate Release, ECF No. 109, is **DENIED WITH PREJUDICE**.

Dated: May 5, 2021

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge